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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**SECOND OMNIBUS OBJECTION
OF USACM TRUST TO PROOFS OF
CLAIM BASED ENTIRELY UPON
INVESTMENT IN THE EAGLE
MEADOWS LOAN**

Date of Hearing: July 26, 2011

Time of Hearing: 1:30 p.m.

Estimated Time for hearing: 10 min.

The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing the Proofs of Claim listed in **Exhibit A**. These claims were filed by investors (“Direct Lenders”) against USA Commercial Mortgage Company (“USACM”) based upon an investment in a loan to Fox Hills 185, LLC, Fox Hills River East, LLC, Fox Hills 119, LLC, Fox Hills 62, LLC, and Fox Hills 37, LLC (collectively, the “Borrower”). (the “Borrower”). This loan was sometimes referred to as the “Eagle Meadows Loan” and that is how the USACM Trust will refer to it here. This Objection is supported by the Court’s record and the Declarations of Geoffrey L. Berman and Edward M. Burr in

Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the Eagle Meadows Loan. (the “Berman Decl.” and “Burr Decl.”).

THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE DIRECT LENDERS’ RIGHTS TO REPAYMENT ON THE EAGLE MEADOWS LOAN, SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE REAL PROPERTY SECURING THE EAGLE MEADOWS LOAN OR SHARE IN THE RECOVERY OF ANY FUNDS FROM THE GUARANTOR FOR THE LOAN.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND FACTS

a. The USACM Bankruptcy

On April 13, 2006 (“Petition Date”), USACM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtor’s post-petition management of the Debtor was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC, who served as the Chief Restructuring Officer.

USACM was a Nevada corporation that, prior to the Petition Date, was in the business of underwriting, originating, brokering, funding and servicing commercial loans primarily secured by real estate, both on behalf of investors and for its own account. That business included the solicitation of investors to purchase fractional interest in loans that USACM originated and then serviced. These investors are referred to as “Direct Lenders” in USACM’s bankruptcy case and in this Objection.

On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization” as Modified Herein [Docket No. 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this Court, USACM sold the servicing rights to most of the loans it serviced to Compass

Partners, LLC and Compass Financial Partners, LLC (“Compass”), including the Eagle Meadows Loan. The sale to Compass closed on February 16, 2007.

The USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the successor to USACM with respect to standing to seek allowance and disallowance of Claims under 11 U.S.C. § 502(a).

Upon information derived from filings in the United States District Court, District of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC, et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan service agreements in the USACM bankruptcy case and took a secured interest in those Purchased Assets by executing a Master Repurchase Agreement (“Repurchase Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

Further, from filings in the same action, the Trust believes that “Effective as of September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-RCJ, along with certain affiliates.¹ By Order entered on July 19, 2010 by the Hon. Robert C. Jones in the Asset Resolution Case, the servicing rights for 19 loans were transferred to

¹ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC, Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP Eagle Meadows SPE LLC, and Shamrock SPE LLC.

1 Cross, FLS. The Eagle Meadows Loan, was among the loans whose servicing rights were
2 transferred to Cross, FLS.

3 The Trust has attempted to monitor loan collections through monitoring the district
4 court litigation and the ARC bankruptcy case, but has received limited information
5 concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or
6 their successors, including the trustee in bankruptcy for Asset Resolution. The Trust's
7 legal counsel has been in contract with Cross FLS about certain loans that it is servicing,
8 including the Eagle Meadows Loan. The following is the extent of the USACM Trust's
9 information on the current servicing and status of the Eagle Meadows Loan.

10 **b. The Eagle Meadows Loan**

11 USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding
12 for an acquisition and development loan to a borrower identified as "Eagle Meadows
13 Development, Ltd."² A copy of the Offer Sheet is attached hereto as **Exhibit B** and
14 incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed was
15 \$35,630,000. The Offer Sheet described the investment as a "First Trust Deed
16 Investment" and noted that the investment would be secured by a first deed of trust on 479
17 acres generally known as Fox Hills Phase II, the second phase of a master planned
18 community that had begun the entitlement process, and was situated on Interstate 5 and
19 State Route 152. The Offer Sheet further stated that the loan to value was approximately
20 50% based upon comparable acreage sold in the area and stated that an appraisal had been
21 ordered.³ Pursuant to the Circular, the loan was intended to restructure existing debt and
22 to acquire an additional 40 acre parcel.

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25 ² The name of the borrower on the Offer Sheet is a different entity from the actual borrowing entities that
signed the loan agreement.

26 ³ Although the Offer Sheet said that an appraisal had been ordered, counsel for the Trust has been unable to
locate an appraisal.

On October 19, 2005, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by Deed of Trust” (the “Note”) and a Loan Agreement. (Berman Decl., ¶ 5.) The Note and Loan Agreement provided for a loan of \$29,600,000, with potential subsequent increases up to \$35,630,000. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from the Borrower in favor of the Direct Lenders that was recorded in the official records of Merced County, California on November 9, 2005 at Instrument Number 05-89765, as were subsequent amendments to the Deed of Trust to secure subsequent advances. The Note was also supported by an Unconditional Guaranty executed by Kent Hoggan and Catamount Management, LLC on October 19, 2005.

The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Non-performing” on the Note as of July 31, 2006. (Berman Decl., ¶ 6.) During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders.

Counsel for the Trustee has been advised by a representative of Cross, FLS that the accrued taxes on the property currently exceed the value of the property for the Eagle Meadows Loan. Cross, FLS has been told by brokers that there is no interest in purchasing the land for development (as had originally been planned), and that no such interest is anticipated. Consequently, Cross, FLS has marketed the property’s water rights and has entered into a contract with a buyer, however, that sale has stalled due to the taxes on the property. The guarantor has filed for bankruptcy.

c. The Eagle Meadows Claims

Exhibit A, attached, lists Proofs of Claim filed by Direct Lenders that appear to be based upon an investment in the Eagle Meadows Loan. (Burr Decl. ¶ 7.) **Exhibit A** identifies the Proof of Claim number, the claimant, the claimant’s address, the total

amount of the claim and the total amount of the claim that appears to be related to an investment in the Eagle Meadows Loan based upon the information provided by the claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to hereafter as the “Eagle Meadows Claims.” As required by Nevada LR 3007, a copy of the first page of the proof of claim for each of the claims referenced in **Exhibit A** are attached as **Exhibit C**.

II. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is “unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. § 502(b). A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).

1 **IV. THE OBJECTION**

2 The Eagle Meadows Loan appears to have been a legitimate, arms-length
3 transaction with a third party borrower. In addition, the Direct Lenders took a known risk
4 by investing in a promissory note secured by a lien on real property.

5 USACM is not liable for the Borrower's default or any decrease in the value of the
6 collateral.

7 The Direct Lenders fail to state a claim because USACM does not appear to have
8 breached the loan servicing agreements with respect to collection of the Eagle Meadows
9 Loan. USACM was under no duty to foreclose on the collateral securing the Eagle
10 Meadows Loan or take any other action.

11 This objection will not affect the Direct Lenders' right to be repaid on the Eagle
12 Meadows Loan by the Borrower, to recover from the sale of any collateral that secured the
13 Eagle Meadows Loan, or to recover on the guaranty supporting the Eagle Meadows Loan.

14 **V. CONCLUSION**

15 The USACM Trust respectfully requests that the Court disallow the claims against
16 USACM listed in **Exhibit A** in full because those claims are based entirely upon an
17 investment in the Eagle Meadows Loan. This objection concerns only claims based upon
18 an investment in the Eagle Meadows Loan and not any other claims of any of the Direct
19 Lenders. The USACM Trust also requests such other and further relief as is just and
20 proper.

1 Dated: June 27, 2011

2 LEWIS AND ROCA LLP

3 By s/John Hinderaker (AZ 18024)

4 Robert M. Charles, Jr., NV 6593

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10 Attorneys for the USACM Liquidating Trust

11 Copy of the foregoing and pertinent
12 portion of Exhibits mailed by first
13 class postage prepaid U.S. Mail on
14 June 27, 2011 to all parties listed on
15 Exhibit A attached.

16 LEWIS AND ROCA LLP

17 s/ Matt Burns
18 Matt Burns
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